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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ROBERT WYATT,

Plaintiff and Appellant,

v.

THE STATE BAR OF CALIFORNIA,

Defendant and Respondent.

B210819

(Los Angeles County
Super. Ct. No. BC367617)

APPEAL from a judgment of the Superior Court of Los Angeles County.
William F. Fahey, Judge. Affirmed.

Robert E. Wyatt, in pro. per., for Plaintiff and Appellant.

Office of General Counsel, The State Bar of California, Marie M. Moffat,
Lawrence C. Yee and Mark Torres-Gil, for Defendant and Respondent.

Wyatt filed a civil complaint against the State Bar of California (State Bar), asserting that it improperly closed his complaint against his former attorney without initiating disciplinary action. The trial court sustained the State Bar's demurrer to Wyatt's civil complaint without leave to amend, and entered judgment for the State Bar. We affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

According to Wyatt's second amended complaint,¹ a "high profile" attorney and member of the State Bar stole \$24,000 from him in an illegal business agreement or "real estate scheme." Wyatt filed a complaint with the State Bar. The State Bar investigated Wyatt's complaint. On August 31, 2005, the State Bar informed Wyatt by letter that it was closing his complaint and would not initiate disciplinary proceedings against the attorney. The letter stated that the attorney's alleged misconduct occurred more than five years earlier and the State Bar was therefore prohibited from taking any disciplinary action. The letter further explained that to successfully prosecute a complaint, the State Bar must have clear and convincing evidence that the attorney has violated his professional responsibilities. The letter explained the "clear and convincing" standard, and advised that the State Bar did not believe it would prevail in a prosecution based on Wyatt's complaint. The letter informed Wyatt that if he had any new information he was free to produce it to the State Bar. It also described an "Audit and Review" process Wyatt could pursue if he wanted another attorney to review the closing decision. The letter additionally suggested that Wyatt should contact an attorney or a bar association if he wished to take legal action against his former attorney.

¹ "Because this case comes to us on a demurrer for failure to state a cause of action, we accept as true the well-pleaded allegations in [Wyatt's second amended complaint]. ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.]" ' " (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) We also consider evidentiary facts found in exhibits attached to a complaint. (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 374-375.)

Wyatt filed suit against the former attorney. The case settled after mediation.

In March 2007, Wyatt filed suit against the State Bar, asserting claims for negligence, intentional infliction of emotional distress, negligent misrepresentation, unfair business practices, negligent investigation, and constructive fraud. The trial court sustained the State Bar's demurrer to the complaint. However, the court allowed Wyatt leave to amend to allege a claim for race-based discrimination. Wyatt filed a first amended complaint asserting claims under article I, section 31 of the California Constitution, and Business and Professions Code section 6091. The trial court sustained the State Bar's demurrer to the complaint for failure to state a cause of action, without leave to amend. Wyatt filed a motion for an order vacating the demurrer ruling and setting aside the judgment. The State Bar did not oppose the motion, which the court then granted. In April 2008, Wyatt filed a second amended complaint asserting claims for violation of California's Anti-Discrimination Law (Cal. Const., art. I, § 31); breach of fiduciary duty; violation of Business and Professions Code section 6091; and violation of the Fourteenth Amendment of the United States Constitution.

The second amended complaint alleged that the State Bar "bungled" the investigation of Wyatt's complaint, and that the investigator's actions were "racially discriminatory, biased, arbitrary and capricious, personal and deficient." The complaint further asserted that the State Bar's decisions "were based solely on: race, sex, color, ethnicity, and national origin." Wyatt sought \$6,240,000 in compensatory damages, as well as punitive damages, attorneys fees, and costs.

The State Bar demurred a third time. It argued that the superior court lacked jurisdiction because the California Supreme Court has exclusive jurisdiction over attorney discipline matters. The State Bar further argued that the cause of action under the California Constitution failed to state a claim because article I, section 31 applied only to discrimination in public employment, public education, and public contracting. The State Bar asserted that it is immune from damages relating to its discretionary licensing activities. It contended that it owed no fiduciary duty to Wyatt, and that there is no private cause of action under Business and Professions Code section 6091.

In addition, the State Bar argued that the second amended complaint failed to allege material facts to state a claim for racial discrimination or a violation of Business and Professions Code section 6091, and pled no facts to state a Fourteenth Amendment claim.

In August 2008, the trial court sustained the State Bar's demurrer to the second amended complaint without leave to amend, and later entered judgment against Wyatt. This appeal followed.

DISCUSSION

“The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law. [Citations.] On a question of law, we apply a de novo standard of review on appeal. [Citation.] [¶] A general demurrer is appropriate where the complaint ‘does not state facts sufficient to constitute a cause of action.’ (Code Civ. Proc., § 430.10, subd. (e).) [¶] A demurrer is likewise appropriate where the complaint on its face discloses that ‘[t]he court has no jurisdiction of the subject matter of the cause of action.’ (Code Civ. Proc., § 430.10, subd. (a).) Such a demurrer ‘is functionally similar to a demurrer for failure to state a cause of action, and therefore is deemed a “general demurrer.” [Citation.]’ [Citations.]” (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420-1421.)

“We not only treat the demurrer as admitting all material facts properly pleaded, but also ‘give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]’ [Citation.] [¶] If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.) While we consider all material facts properly pleaded, including ultimate facts, we do not “assume the truth of contentions, deductions or conclusions of law.” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) And, “because it is not a reviewing court’s role to construct theories or arguments which would undermine the judgment [citation], we consider only those theories advanced in the appellant’s briefs.” (*Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 564.)

I. The Trial Court Did Not Have Subject Matter Jurisdiction Over Wyatt's Second Amended Complaint

The trial court properly determined that it did not have subject matter jurisdiction over Wyatt's claims. The power to discipline attorneys in California is an "expressly reserved, primary, and inherent power" of the California Supreme Court. (*Obrien v. Jones* (2000) 23 Cal.4th 40, 48; *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 557 (*Saleeby*); Bus. & Prof. Code, § 6100.) Although the State Bar Act originally allowed any court to administer attorney discipline, "in 1951, the State Bar Act was amended to exclude superior courts and appellate courts from exercising such jurisdiction, leaving the Supreme Court as the sole judicial entity with jurisdiction over attorney discipline. (Bus. & Prof. Code, §§ 6087, 6100; *Jacobs v. State Bar* (1977) 20 Cal.3d 191, 196 [*Jacobs*]).) Thus, in California, the inherent judicial power of the superior court does *not* extend to attorney disciplinary actions. That power is exclusively held by the Supreme Court and the State Bar, acting as its administrative arm. ([*Jacobs*, at p. 198.])" (*Sheller v. Superior Court* (2008) 158 Cal.App.4th 1697, 1710.)

Wyatt's complaint boils down to one charge: the State Bar should have initiated disciplinary proceedings against Wyatt's former attorney. This complaint fell squarely within the Supreme Court's inherent and exclusive jurisdiction over attorney discipline. *Bolotin v. Cal. State Personnel Board* (1955) 131 Cal.App.2d 197 (*Bolotin*), addressed the issue before us on similar facts. In *Bolotin*, the plaintiff, like Wyatt, filed suit against the State Bar and two of its officers, seeking relief for the State Bar's failure to take action on her complaint against her former attorneys. The court of appeal found that a demurrer to the civil complaint was properly sustained, holding:

"(1) A failure, if any, of the State Bar officials to perform their duty in the initiation and conduct of a disciplinary proceeding would not create a cause of action for damages in plaintiff's favor. The law does not provide in that manner for the enforcement of the performance of duty by public officers. (2) It does accord to the individual the right to invoke disciplinary action against an attorney in the Supreme Court, upon a proper showing that 'The State Bar has arbitrarily failed or refused to grant a hearing on such specific charges, or has arbitrarily failed or

refused, after a hearing, to take appropriate action.’ (*In re Walker* [1948], 32 Cal.2d 488, 491[(*Walker*)]²) Plaintiff chose not to pursue that remedy. She has not the alternative remedy of an action against the State Bar for damages for asserted dereliction of duty.” (*Bollotin, supra*, 131 Cal.App.2d at p. 200.)

Subsequent cases confirm that “[d]eterminations and recommendations of the bar in matters of discipline and admission are directly reviewable in the [Supreme Court.]” (*Saleeby, supra*, 39 Cal.3d at p. 557.) For example, in *Jacobs*, the Supreme Court held that because of its “sole original jurisdiction to disbar or suspend an attorney,” the superior court does not have the authority to review the validity of a State Bar subpoena at the request of an attorney who is subject to a State Bar preliminary investigation. (*Jacobs, supra*, 20 Cal.3d at pp. 196-197.) The court noted that the attorney could move to quash a subpoena with the State Bar investigating committee, and “[o]nce remedies available from the local committee are exhausted, any decision by the State Bar related to disciplinary matters is reviewable by us under California Rules of Court, rule 952(c) [now rule 9.13(d)].” (*Id.* at p. 198.)

² In *Walker*, the petitioner filed an accusation in the Supreme Court against her former attorneys, alleging unprofessional conduct. She did not first file a complaint with the State Bar. The court noted that while it had the same powers to discipline attorneys as it did before the enactment of the State Bar Act, it would not exercise that power until a complainant had followed State Bar Act procedures. The court specified: “we believe it proper to dismiss an accusation filed in this court unless it appears from the accusation: (1) that the accuser has set forth specific charges which, if proved, would constitute grounds for disciplinary action; (2) that the same specific charges have been previously presented in written form to The State Bar for the purpose of invoking its disciplinary powers; and (3) that following such presentation to The State Bar, it has arbitrarily failed or refused to grant a hearing on such specific charges or has arbitrarily failed or refused, after a hearing, to take appropriate action.” (*Walker, supra*, 32 Cal.2d at p. 490.)

Saleeby is also instructive when compared with the case at bar. In *Saleeby*, the Supreme Court held that the superior court has jurisdiction to review the State Bar's rejection of a client's claim submitted to the Client Security Fund (CSF).³ The court held: "Because the grant or denial of reimbursement from the CSF does not involve discipline or admission of attorneys and there is no legislative requirement for direct review of such determinations here, we decline to hold that our direct review of such decisions is appropriate as a matter of course . . . [¶] . . . [R]ule 952 does not apply in this context because the bar's determination of CSF matters does not involve its 'administrative' role in aiding this court in matters of discipline and admissions." (*Saleeby, supra*, 39 Cal.3d at pp. 558-559, fn. omitted.) In contrast, Wyatt's complaint directly involved attorney discipline and challenged the State Bar's actions in its capacity as the administrative arm of the Supreme Court.

As noted in *Jacobs* and *Saleeby*, the California Rules of Court establish procedures for review of State Bar decisions relating to attorney discipline. California Rules of Court, rule 9.13(d) provides: "A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be filed within 60 days after written notice of the action complained of is mailed to the petitioner"⁴ Wyatt did not avail himself of this procedure.

³ The CSF was established "to relieve or mitigate pecuniary losses caused by the dishonest conduct of . . . members of the State Bar." (Bus. & Prof. Code, § 6140.5, subd. (a).) Payments from the fund are discretionary. (*Ibid.*; *Saleeby, supra*, 39 Cal.3d at p. 555.)

⁴ The case at bar concerns a decision of the enforcement division within the Office of the Chief Trial Counsel. "The Board of Governors of the State Bar delegates to the Office of the Chief Trial Counsel exclusive jurisdiction to review inquiries and

Bolton, Jacobs, and California Rules of Court, rule 9.13 (d), among other authorities, inexorably lead to the same conclusion. To the extent that any part of Wyatt's complaint about the State Bar was permissible, his only avenue of redress was in the Supreme Court, not the superior court.

II. The Trial Court Properly Sustained the Demurrer As to Wyatt's Discrimination Claims

As we understand his arguments, Wyatt further contends that his civil complaint was not really a challenge to the State Bar's decision on attorney discipline, but was instead a complaint about the State Bar's discrimination against him in violation of his constitutional rights. He contends that his discrimination claims therefore fell outside of the exclusive jurisdiction of the Supreme Court. Even were we to assume that Wyatt's constitutional claims were not necessarily subject to the Supreme Court's exclusive jurisdiction, we would still conclude that the demurrer was properly sustained.

Wyatt's complaint asserted that the State Bar violated article I of section 31 of the California Constitution (Section 31). Section 31 was "adopted by the voters on November 5, 1996, as the California Civil Rights Initiative (Proposition 209)." (*C&C Construction, Inc. v. Sacramento Municipal Utility Dist.* (2004) 122 Cal.App.4th 284, 291.) Section 31, subdivision (a) provides: "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Wyatt's complaint did not concern public employment, public education, or public contracting. Section 31 therefore did not apply.

Wyatt also sought damages based on the allegations that the State Bar discriminated against him in violation of the United States Constitution, and deprived him of due process. Wyatt asserted these claims as direct causes of action under the Fourteenth Amendment. But the Fourteenth Amendment does not create a direct cause of

complaints, conduct investigations and determine whether to file notices of disciplinary charges in the State Bar Court," with certain exceptions not applicable here. (Rules and Regs. of the State Bar, Div. II, ch. 1, rule 2101.)

action for damages; instead plaintiffs must assert such claims under section 1983 of title 42 of the United States Code (section 1983). (*Hughes v. Bedsole* (4th Cir. 1995) 48 F.3d 1376, 1383, fn. 6; *Azul-Pacifico, Inc. v. City of Los Angeles* (9th Cir. 1992) 973 F.2d 704, 705; *Ward v. Caulk* (9th Cir. 1981) 650 F.2d 1144, 1148.) However, even had Wyatt pled his claims under section 1983, the claims would have failed. It is well-established that the State Bar and its employees, as quasi-judicial officers, have an absolute federal immunity from civil rights actions arising out of their conduct of disciplinary proceedings. (*Rosenthal v. Vogt* (1991) 229 Cal.App.3d 69, 75-76 (*Rosenthal*); *Lebbos v. State Bar* (1985) 165 Cal.App.3d 656, 665-666; *Greene v. Zank* (1984) 158 Cal.App.3d 497.) This immunity “extends to all judicial acts, however motivated and however intrinsically erroneous.” (*Rosenthal*, at p. 76.) The State Bar’s demurrer was properly sustained as to Wyatt’s claims based on federal law.

Moreover, Wyatt pled no facts that, if true, could even potentially take the case outside the Supreme Court’s exclusive jurisdiction. Stripped of contentions and legal conclusions, the second amended complaint pled few facts. For example, in addition to those facts stated above, the complaint also pled that Wyatt is African American. It pled that the former attorney’s alleged theft occurred on or around November 2004, less than one year before the August 2005 closure letter.

Although the complaint asserted that the State Bar’s closure letter was arbitrary and discriminatory, the letter attached to the complaint stated a detailed and neutral explanation for the decision not to initiate disciplinary action based on Wyatt’s complaint. According to the letter, the State Bar determined that the former attorney represented Wyatt in a felony criminal matter occurring more than five years earlier. In addition, the State Bar determined that Wyatt had executed a deed of trust to secure the balance of outstanding fees owed to the attorney for work performed more than 14 years earlier. The deed of trust was held against a piece of real property. The letter noted that although the attorney had not advised Wyatt in writing to seek advice from an independent lawyer before granting him the deed of trust, the attorney’s failure to give that advice occurred more than five years earlier.

The State Bar also indicated that, at the time the note was paid in full in November 2004, Wyatt's former wife was the sole owner of the real property subject to the deed of trust. Wyatt's marriage was dissolved at least ten years earlier. The letter further stated that according to the wording on the deed of trust in question, the former attorney was entitled to payments of interest on a principal amount of \$20,000 until paid in full. The letter reported that Wyatt told the State Bar investigator that he had not made any payments against the deed of trust during the past several years that would have reduced the principal amount owing to the former attorney.

Finally, the complaint stated facts relating to the former attorney's statements at mediation. According to the complaint, the former attorney admitted that he did not have a signed fee agreement. The complaint additionally pled that the former attorney explained: "because of his tenure, he and his 'group' of Jewish friends are exempt from many of the rules. 'We do business with handshakes,'" was one of his statements.⁵

These facts raise only one issue: whether the State Bar made the wrong decision on the merits of Wyatt's complaint against his former attorney. As explained above, this is an issue that falls within the Supreme Court's jurisdiction over attorney disciplinary matters. (Cf. *Smith v. State Bar* (1989) 212 Cal.App.3d 971 [bar applicant's complaint, including federal and state due process claims, was within Supreme Court's original jurisdiction.] In sum, the trial court properly sustained the demurrer to Wyatt's second amended complaint.⁶ Wyatt's challenge to the trial court's rejection of his motion to compel is moot.

⁵

In his brief on appeal, Wyatt contends that the attorney made other relevant admissions during the mediation. Although Wyatt must have known about these claimed admissions at the time he filed his original complaint and the subsequent amendments, he never included any additional admissions in any of the complaint's iterations. We consider only what Wyatt in fact pled in the second amended complaint.

⁶

Wyatt does not argue that the court abused its discretion in failing to grant him leave to amend, or that he could have stated a viable claim if given leave to amend. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

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BIGELOW, J.

We concur:

FLIER, Acting P. J.

BAUER, J.^{*}

^{*} Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.